

APPEAL BY: NICHOLAS CHARLES

**LOCAL PLANNING AUTHORITY:
LONDON BOROUGH OF CAMDEN**

**APPEAL SITE:
59-61 CAMDEN HIGH STREET LONDON NW1 7JL**

**LOCAL PLANNING AUTHORITY REFERENCE:
2020/2434/P**

**DATE OF PLANNING APPEAL STATEMENT:
30/7/2021**

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1.0 INTRODUCTION

- 1.1 This appeal statement has been prepared in support of the above appeal submission. It sets out the reason for the appeal, and the applicant's case against the Council's decision.

2.0 APPLICANT'S APPEAL CASE SUMMARY

- 2.1 The below table provides a summary of the applicant's main arguments and response to the Council's reasons for refusal.

No.	Summary Reason	Applicant Response	Associated Appendix
1.	Scale, bulk, design	All extensions are in keeping with the scale of neighbour properties and the existing Conservation Area character.	Appendix 8: Camden Housing Deliver Test (2020) Appendix 9: London Plan 2021 Policies.
2.	Overshadowing to ground floor nursery area.	An additional addendum note has been submitted to fully demonstrate that there would be no impact to the garden area at the nursery.	Appendix 1: Additional Sunlight/Daylight Addendum (June 2021)
3.	Lack of Air Quality Assessment	Property is an existing residential unit. Refusal not supported by Council's own Validation Checklist	Appendix 2: Validation Checklist (2018), page 17-18
4.	S106 for: Construction Management Plan and Bond	Applicant happy to comply.	
5.	S106 as car free	Applicant happy to comply.	
6.	S106 small sites affordable housing contribution (£37,980)	This fails to comply with the Ministerial Statements, NPPF, London Plan and subsequent appeals. However, the S106 draft submitted includes this provision.	Appendix 3: NPPF (2021) Appendix 4: Appeal Example 3161415 and Associated Plans Appendix 5: MHCLG Letter Appendix 6: MHCLG Draft London Plan Deletions Appendix 7: MHCLG London Plan Representation

3.0 SITE SURROUNDINGS

- 3.1 The subject site comprises a three-storey mixed use mid terrace building with commercial at ground floor and residential above. The application site falls within the Camden Town Conservation Area. However, is not listed or near a listed building. The site is west of the Camden High Street where there are similar mixed-use buildings.

However, the property is part of a row of terraces with no uniformity or shared general character.

- 3.2 The application site benefits from a mix of 4 residential properties on its upper floor and commercial uses at ground floor. There are no Tree Preservations on Site, however further constraints at the site include:

Constraint Name	Constraint Type
Article 4 Directive	A1 to A2 (effective from 1 June 2018)
Article 4 Directive	B1a to C3 (effective from 5th November 2015, first notified 9th October 2014)
London Oxford Airport - All Development Exceeding 45 M	Article 4 Direction Basement development (effective from 1 June 2017)
Employment Zone	Business Improvement Districts. / Business Improvement Districts. (Constraints)
HS2 Corridor	CMP Priority Area / CMP Priority Area (Constraints)
Town Centre	Local Plan Centres / Local Plan Centres (Constraints)
Shop Front Protection	Local Plan Frontages / Local Plan Frontages (Constraints)

4.0 RELEVANT PLANNING HISTORY

59-61 Camden High Street

2019/1225/P: Use as 1 x 2-bed flat and 1 x 3-bed flat at first floor; and 1 x 1-bed flat and 1 x 2-bed flat at second floor (Class C3) ***Granted 08/04/2019***

2019/3697/P: Conversion of property from 2 flats to 3 flats (1x 2-bed, 2x 1-bed) on first floor. ***Granted subject to the completion of legal agreement.***

34865R1: Change of use of the southern half of the ground floor and the whole of the first and second floors from retail to offices. ***Granted 08/11/1982***

TP82692/20359: Extension to storage shed at Nos. 59-61 Camden High Street, St. Pancras. ***Granted 26/02/1959***

TP82692/21485: The erection of a single storey extension at the rear of 59-61 Camden High Street, St. Pancras, for use as a shop. ***Pending consideration***

61 Camden High Street

TP3021/12572: To erect an additional upper storey to an existing single-storey rear addition at the premises No. 61, Camden High Street, St. Pancras, and to use as a showroom in connection with existing use for retail sale of furniture. ***Granted 11/10/1962***

TP73043/25330: Erection of a single-storey building at rear of No. 61, Camden High Street, St. Pancras, for use as a showroom in connection with the existing furniture shop. **Granted 09/05/1956**

63-65 Camden High Street

8903257: Erection of a four storey building for ground floor retail use with three floors of B1 office use above. **Granted 09/11/1989**

67 & 67A Camden High Street

2016/4496/P: Erection of mansard roof extension to 67 and 67A Camden High Street to create 2 two-bedroom flats. **Granted Subject to a Section 106 Legal Agreement 15/05/2017**

269 Camden High – alteration to butterfly roof

2019/4193/P: Alteration to an existing butterfly roof to form a flat roof plus the installation of air-conditioning condenser units at roof level with associated ducting on the rear elevation
Granted 25-09-2019

5.0 APPLICANT'S CASE

Reason 1: Scale and massing's impact to Conservation Area

- 5.1 The Council has argued that the proposed extensions would result in substantial harm to the Conservation Area. The Council's reason for refusal states:

The development, by reason of its height, bulk, mass and detailed design, would be detrimental to the appearance of the host property, the streetscape and the Camden Town Conservation Area contrary to policies D1 (Design) and D2 (Heritage) of the London Borough of Camden Local Plan 2017

- 5.2 As part of its assessment within the officer's Delegated Report it makes several references to the Conservation Area guidance (appraisal published in October 2007). In particular, at point 2.21 of the report it states:

Within the Camden Town Conservation Area there are many interesting examples of historic rear elevations. The original historic pattern of rear elevations within a street or group of buildings is an integral part of the character of the area and as such rear extensions will not be acceptable where they would compromise the special character.

- 5.3 The applicant completely disagrees with the Council that the above paragraph applies to **all** properties within the Conservation Area and that in particular, it applies to the application site itself. The rear of the site has already been modified a number of times as related within the officer report. There is no real pattern at the rear of the properties in the terrace. This generic paragraph used by the Council in its assessment fails to

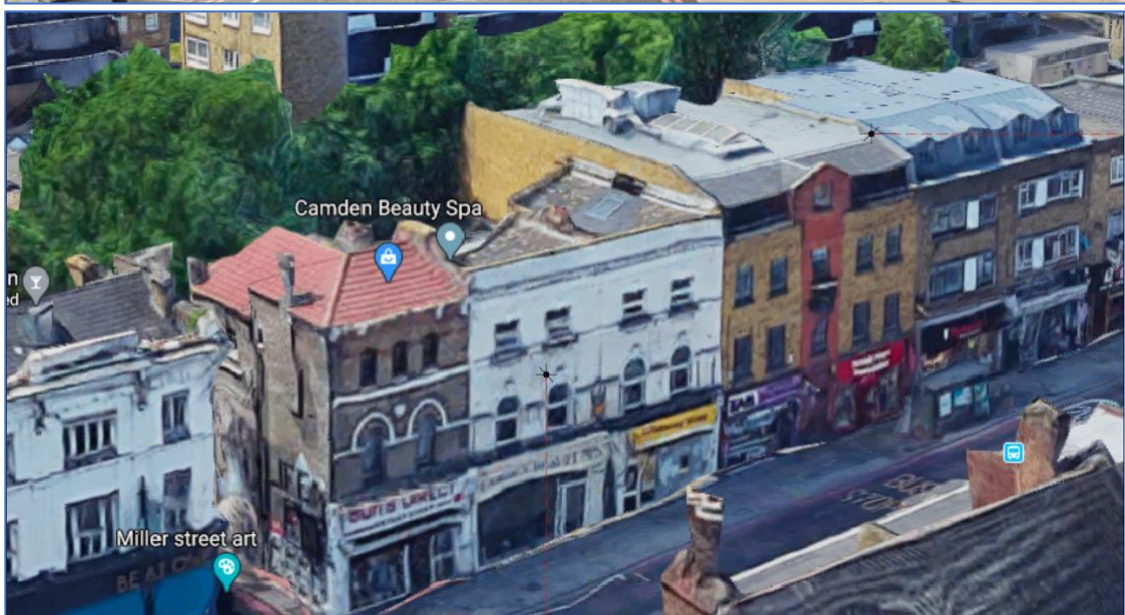
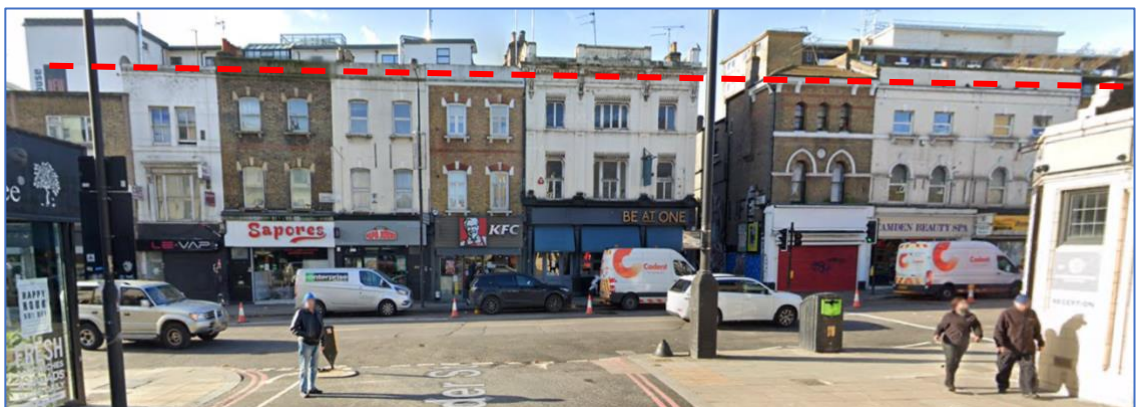
demonstrate any special regard within the appraisal for the rear elevation of the property at 59-61 Camden High Street. In particular, the officer states the below architectural characteristics would be being harmed:

- Strong front parapet line
- mansard would erode the character of the roofline in medium and long views
- Existing feature butterfly roof would be harmed
- Second floor extension would also project beyond the historic rear building line

- 5.4 The historic extensions at the host property and other properties on the terrace, means that the original historic building line no longer exists. There are no unformed building plot designs or upper level architectural building scale designs remaining at the rear. Of these particular properties. There are six properties on the terrace that have had roof and rear extensions that the Council now wishes to argue are irrelevant to the assessment and character of the Conservation Area for a number of tenuous reasons. These include: they are either too historic; under a different policy framework; or since they were considered acceptable they are not now (see Officer Delegated Report point 2.23).
- 5.5 The whole of the Borough of Camden has been built up based on previous policy frameworks. Therefore, the existing context of a site is also important. It is difficult to understand why the Council does not consider that the developments of the properties within the immediate vicinity of the site are relevant to the Conservation Area context. The Council notes that one property in particular at 67 & 67A, does not contribute towards the parapet uniformity but that this is acceptable because it is of a different style. All the buildings along the street can be argued to be of a different style. However, the below discussion will demonstrate that actually the property at 67 does respect the parapet detail that runs along the buildings in the same way the proposed development does.
- 5.6 While the whole building falls within the Conservation Area we would argue that there is a very different character between the front and rear of the property.
- 5.7 The building's main contribution to the Conservation Area is at its front elevation. At the front of the property the existing parapet referred to by the Council, already extends in front of the property's front butterfly roof design, distorting it and making it unreadable. The focus then becomes the parapet. The Council has approved a number of roof extensions at both sides of the street, even in cases where there was previously butterfly roof designs (48-50 Camden High Street, also 2019/4193/P).
- 5.8 Within the Conservation Area appraisal, the focus of interest is applied primarily to the front elevation of the property along Camden High Street. Here it is stated that the property was originally a "brick house" that has been painted over. There is no mention of the rear of these properties having any real importance within the Conservation Area hierarchy. In addition, the Council's position that the upper floor rear of the property has

any real historic importance is not supported by the appraisal at any part. It is not identified as a focal point within the Conservation Area or any special regard placed on it.

- 5.9 At the front, the images below demonstrate the only unifying feature along the terrace: the parapet detail. As can be seen from the drawing image this would remain unharmed and extended to the number 67 and 67a.





Drawing image 1: Proposed roof extension would sit behind the existing parapet wall at the front.

- 5.10 As can be seen, the proposed mansard would sit behind the existing historic parapet wall maintaining the integrity of the most important historic fabric of the building (the front elevation). The butterfly detail cannot be seen so it has limited benefit to the Conservation Area. The application proposes to erect a mansard that is exactly the same height as the properties to either side of it, bringing it in line with all the properties that side of terrace including both Savant House and 59 Camden High Street. The proposed mansard would be angled away from the front elevation and parapet, and would not be visible from street level. The mansard would not erode the character of the roofline in medium and long views because it would be exactly in line with the existing rooflines to either side of it from any views.
- 5.11 Since there is no uniformed roof form, the proposed mansard is similar to that approved at 67 Camden High Street. Therefore, the design and scale of the proposed mansard is directly mirrored within the properties of the existing terrace. The proposed mansard would use grey slate similar to that at number 67. However again there is no uniformed materiality at the location.
- 5.12 As the Council notes, the butterfly roof has already been eroded by historic approvals. In this context, the majority of the properties on that part of the High Street benefit from roof extensions. The Council has also approved a number of roof extensions to butterfly roofs across on the road at numbers 64-70 and 52-56. However, at those properties the butterfly roofs could be read more clearly and were unobscured by roof alterations. Nevertheless, the Council has approved their removal and replacement with mansard roof extensions. In the current context, this feature has already been significantly eroded to argue that it forms any real importance on the overall appearance of that part of the Conservation Area.
- 5.13 The Council's current position that there is a new policy framework therefore everything previously approved is irrelevant seems extremely odd. Just because the Council adopts a new policy framework doesn't mean no previous character, design or amenity

considerations or assessments are relevant. The fact of the matter is the Council has failed to demonstrate any significant difference between how it assessed the area under the previous framework compared to the existing. What the fundamental change in policy is that renders this application's assessment completely different to any before it under the previous policy framework.

- 5.14 At the rear of the site, the properties are already heavily built up and there is no real historic uniformity. By the Council's own description within its Delegated Report (see point 2.24) the original historic massing of the property has already been destroyed and there is nothing much of it left. The existing rear butterfly detail may be viewable on plan but it has already been weakened by the existing roof developments.
- 5.15 The existing rear building line brings no architectural merit or benefit to the Conservation Area. The Conservation Area appraisal highlights no reference to any discernible positive impact from the rear elevation of the property. In addition, the Council through years of allowing rear extensions on the road has already eroded any consistent layout or uniformed scale. The proposed rear extensions would mirror the existing bulk at 63-65 and 67-67a Camden High Street. Here the Council saw no issue in allow the extension to protrude beyond the "historic" building line at the upper floors. Also, given the age of the buildings it is not known what the exact building line actually was. Given what is existing at the rear of the site, we cannot agree with the Council that the proposed extensions would result in substantial harm to the Conservation Area.
- 5.16 Also, there are several residential properties along the high street. There are residential properties at the application site. Essentially, the application only aims to reorganise these units in order to result in a more efficient use of space and introduction four more units. The aims of this is supported by London Plan Policies D3, H2 and H9. All three policies aim to encourage boroughs to apply a positive approach to the use of small sites to contribute to the housing targets; ensure that each development is optimised where possible with the maximum amount of residential units; promote efficient use of existing housing stock; and promote efficient use of under used sites (see Appendix 9).

Policy D3

A All development must make the best use of land by following a design-led approach that optimises the capacity of sites, including site allocations. Optimising site capacity means ensuring that development is of the most appropriate form and land use for the site. The design-led approach requires consideration of design options to determine the most appropriate form of development that responds to a site's context and capacity for growth, and existing and planned supporting infrastructure capacity (as set out in Policy D2 Infrastructure requirements for sustainable densities), and that best delivers the requirements set out in Part D. B Higher density developments should generally be promoted in locations that are well connected to jobs, services, infrastructure and amenities by public transport, walking and cycling, in accordance with Policy D2 Infrastructure requirements for sustainable densities. Where these

*locations have existing areas of high density buildings, expansion of the areas should be positively considered by Boroughs where appropriate. This could also include expanding Opportunity Area boundaries where appropriate. C In other areas, incremental diversification should be actively encouraged by Boroughs to achieve a change in densities in the most appropriate way. **This should be interpreted in the context of Policy H2 Small sites.***

Policy H9 Ensuring the best use of stock

A Borough should promote efficient use of existing housing stock to reduce the number of vacant and under used-occupied dwellings

Policy H2

A Boroughs should pro-actively support well-designed new homes on small sites (below 0.25 hectares in size) through both planning decisions and plan-making in order to:

- 1) significantly increase the contribution of small sites to meeting London's housing needs*
- 2) diversify the sources, locations, type and mix of housing supply*
- 3) support small and medium-sized housebuilders*
- 4) support those wishing to bring forward custom, self-build and community-led housing*
- 5) achieve the minimum targets for small sites set out in Table 4.2 as a component of the overall housing targets set out in Table 4.1.*

B Boroughs should:

- 1) recognise in their Development Plans that local character evolves over time and will need to change in appropriate locations to accommodate additional housing on small sites*

5.17 In addition to this, the Council's last housing delivery test (See Appendix 8) demonstrated that the Council was unable to meet 95% target set by the Government. The proposed development would contribute to these targets. Under legislation council's that fall short of the target are required to provide an Action Plan. Under the Council's Action Plan published in August 2020, it states Policy H2 aims to maximum the introduction of self-contained units in every development over 200sqm (see Appendix 8: p.13). *Inherently maximum housing delivery wherever possible.* The application site sits squarely within these aims.

Policy H2 - seeks to maximise the delivery of self-contained housing by promoting the inclusion of self-contained housing in non housing development. Policy H2 requires 50% of all additional floorspace over 200sqm to be developed as self- contained housing where it meets set criteria within the Central London Area and designated centres.

- 5.18 Therefore, it is the applicant's case that the proposed development would not result in substantial harm to the character of the Conservation Area and would contribute positively towards meeting the housing targets.

Reason 2: Overshadowing to Ground Floor Nursery

- 5.19 As part of the initial submission, a Daylight and Sunlight report was submitted. This picked up no issues with the proposals on the outdoor space of the nursery or any other property, residential or otherwise, neighbouring or otherwise. However, following the refusal, an additional technical note has been submitted under the appeal.
- 5.20 The results of the further assessment were clear in that there would be no change in the sunlight/daylight to this area in question. It concludes that the area "*would remain unchanged satisfying the BRE criteria.*" Therefore, the assessment is unambiguous in its ascertain that there would be absolutely no loss of amenity (see Appendix 1).

- 5.21 In addition, the officer's Delegated Report at point 2.30 states:

The applicant was advised that officers had concerns with possible overshadowing of the nursery garden space to the rear, however no assessment has been provided of this area.

- 5.22 The applicant would like to point out that at no point during the application's life cycle were we informed that officers were concerned about loss of light to the nursery. However, the updated report is at least sufficiently clear to demonstrate that there would be no impact. Therefore, reason for refusal 2 has been fully addressed in our view.

Reason 3: Lack of Air Quality Assessment

- 5.23 Here the applicant's case is threefold.

- 5.24 In the first instance, the Officer's Delegated Report states

As the development introduces sensitive uses into an area of poor air quality, a detailed air quality assessment is required. This was requested at validation stage but has not been provided. The lack of a detailed air quality assessment, setting out an assessment of the local air quality and appropriate mitigation measures required for the flats, would form a further reason for refusal.

- 5.25 This is untrue. The applicant was not informed that without an Air Quality Assessment the proposals would be refused. The application was made valid and then determined. There was no further discussion on the matter until after the application was determined. However, the requirement of an Air Quality Assessment at validation or otherwise is set out in the Council's own published Validation Checklist.

- 5.26 The Council's Validation Checklist (dated 2018) on page 17-18 (see Appendix 2) states:

Air quality Assessment (AQA)	All Major development	The AQA needs to consider measures to reduce any impact to acceptable levels. This should be proportionate to the scale and type of development.	National Planning Policy Framework
	Any development involving biomass boilers, biomass or gas CHP (including connections to existing networks where the increased capacity is not already covered in an existing AQA)	A basic AQA should be submitted or new buildings/substantial refurbishments and changes of use where occupants will be exposed to poor air quality.	London Plan policy 7.14
	Substantial earthworks or demolition	You must submit more detailed AQAs on the following types of development: <ul style="list-style-type: none"> major applications where the occupants will be exposed to poor air quality where the development is located along a busy road, diesel railway lines, or generally congested area development has more than 75 new residences commercial developments with a floorspace of 2,500 sqm floorspace or more development involving substantial earthworks or demolition development with the potential to significantly change road traffic on any busy roads (those in excess of 10,000 vehicles per day) development that introduces sensitive uses into an area of poor air quality 	Camden Local Plan policies A1, and CC4 Relevant Neighbourhood Plans Camden Planning Guidance on Amenity, and Health and Wellbeing Mayor's Sustainable Design and Construction SPG, and Control of Dust and Emissions during Construction and Demolition SPG Website information
	Any development that could have a significant impact on air quality, either directly or indirectly.	You can find advice about what information you need to include in the assessment in the Planning and air quality pages of our website	

5.27 The development is not a major as it would result in only 8 units in total. The development does not involve a biomass boiler. The development would lead to no new uses that would increase the harmful effects of air quality on the existing residential properties. The area has not been identified by the Council's Local Plan or Proposals Map as an area with especially poor air quality. No significant demolition is proposed. The development does not have more than 75 new residences proposed. No substantial earthwork is proposed. No new commercial uses are proposed. The development would not significantly change road traffic. Therefore, there is absolutely nothing within the proposals that would trigger the need for an AQA under the Council's own policy framework.

5.28 The property already benefits from 4 flats. There are existing flats at the upper levels of all the properties along the road and the Council continues to approve new minor flat conversions without the need for an AQA (2019/1225/P – application site, 2020/1105/P- see Appendix 10). Yet it has applied this as a reason for refusal under the current scheme which highlights inconsistency in the Council's own application of its own policy framework.

5.29 In the second instance Policy CC4 of the Council's policies states:

The Council will ensure that the impact of development on air quality is mitigated and ensure that exposure to poor air quality is reduced in the borough.

The Council will take into account the impact of air quality when assessing development proposals, through the consideration of both the exposure of occupants to air pollution and the effect of the development on air quality. Consideration must be taken to the actions identified in the Council's Air Quality Action Plan.

Air Quality Assessments (AQAs) are required where development is likely to expose residents to high levels of air pollution. Where the AQA shows that a development would cause harm to air quality, the Council will not grant planning permission unless measures are adopted to mitigate the impact. Similarly, developments that introduce sensitive receptors (i.e. housing, schools) in locations of poor air quality will not be acceptable unless designed to mitigate the impact.

Development that involves significant demolition, construction or earthworks will also be required to assess the risk of dust and emissions impacts in an AQA and include appropriate mitigation measures to be secured in a Construction Management Plan.

- 5.30 Especially important is the third paragraph. As stated above the Council has provided no evidence to suggest that the location suffers from poor air quality and there is nothing under the proposals that would suggest they would further impact on the existing air quality within the area.
- 5.31 The aims of the proposals are also supported by London Plan Policies D3, H2 and H9. The application of an AQA in this context is aimed at further restricting the goals of the above London Plan policies by creating additional constraints on minor development that are not born from what is clearly already detailed within the Council's own policies.
- 5.32 In the third instance and as stated previously, the area has not been identified by the Council's Local Plan or Proposals Map as an area with poor air quality. The Council has provided no other evidence to demonstrate a special circumstance in this case that would trigger the submission. Only major developments are required to submit an AQA according to the Council's own policies. We can see no special circumstance that would confirm such an assessment would be required in this particular instance as a departure to policy so we do not agree with the Council's ascertains on this matter and would respectfully ask that the Inspector dismiss this reason for refusal under the application.

Reason 4: CMP

- 5.33 The applicant confirmed during the planning assessment stage that they are happy to accept this provision. This has not changed.

Reason 5: Car Free Development

- 5.34 The applicant confirmed during the planning assessment stage that they are happy to accept this provision. This has not changed.

Reason 6: Small sites affordable housing contribution

- 5.35 Policy H4 of the Council's Local Plan states that:

We will expect a contribution to affordable housing from all developments that provide one or more additional homes and involve a total addition to residential

floorspace of 100sqm GIA or more. The Council will seek to negotiate the maximum reasonable amount of affordable housing on the following basis:

d. sliding scale target applies to developments that provide one or more additional homes and have capacity for fewer than 25 additional homes, starting at 2% for one home and increasing by 2% of for each home added to capacity;

- 5.36 However, the need for small sites to make affordable housing contributions has been tested a number of times under appeal. Clarification has also been provided several times under ministerial directions and policy. Most recently, the NPPF published on 20th July 2021 categorically confirms at paragraph 64, that affordable housing contributions for small sites must not be sought (see Appendix 3). It states:

Provision of affordable housing should not be sought for residential developments that are not major developments, other than in designated rural areas (where policies may set out a lower threshold of 5 units or fewer). To support the re-use of brownfield land, where vacant buildings are being reused or redeveloped, any affordable housing contribution due should be reduced by a proportionate amount.

- 5.37 Legislation¹ requires that decisions must be made in accordance with the development plan unless material considerations indicate otherwise. The NPPF is a material planning consideration and clearly directs against this.
- 5.38 In addition, “a Written Ministerial Statement (WMS) issued on 28 November 2014, together with *Planning Practice Guidance*, which have both subsequently been upheld in the Court of Appeal, indicate that such contributions should not be sought in the case of developments of 10 or fewer dwellings. The WMS, supported by PPG, amounts to national planning policy and must, therefore, carry due weight. The Court of Appeal was clear that the weight to be given to the WMS and PPG, as material considerations, is a matter for the decision taker in the circumstances of the individual case.” (see paragraph 18 of Appeal Decision 3161415 – Appendix 4).
- 5.39 A further ministerial statement was issued to the Mayor of London on 13 March 2020 to direct changes to the new draft London Plan to remove any such request under policy (see Appendices 5&7). The most relevant deletion was the deletion of the two paragraphs that encourage boroughs to seek cash in lieu affordable housing contributions from developments of nine or fewer units to ensure consistency with national policy (see deletions on page 25, point DR3 of Appendix 6)².

¹ Section 38(6) of the Planning and Compulsory Purchase Act 2004 and section 70(2) of the Town and Country Planning Act 1990

² https://www.london.gov.uk/sites/default/files/plp_2020_schedule_of_modifications.pdf

5.40 The resulting London Plan (2021) adopted 1 March 2021 no longer requires small sites affordable housing contributions. Therefore, the Governments message is clear, small sites should not be required to make affordable housing contribution on site or in lieu.

5.41 Additionally, this has been supported by a number of previous appeals. For example, under the 2017 appeal for the site at Caledonian Road (W/16/3161415), the Inspector noted:

For developments of fewer than 10 dwellings, the LP encourages Boroughs to set a lower threshold for contributions to affordable housing where appropriate. ...Policy...requires proposals of 9 dwellings or fewer to make a financial contribution to affordable housing provision off-site. The level of contribution is defined in the Council's Affordable Housing Small Sites Contributions Supplementary Planning Document (Contributions SPD), resulting in a requirement for £50,000 per unit in this case. The Contributions SPD allows for a lower contribution where justified by viability evidence. The appellant has challenged the requirement for any contribution whatsoever towards affordable housing from this development. (paragraph 17)

Whilst I have not been provided with full details of the viability appraisal, any independent assessment of it or any evidence that the Council has done so, I see no strong reason to dispute it...Even if I were to have any serious doubts about the appellant's evidence, further substantial weight in favour of the appeal must be accorded to the WMS and PPG as expressions of up to date national planning policy. Accordingly, in this particular case, having had regard to the development plan as a whole, I conclude that material considerations indicate that, despite potential conflict with CS Policy CS12 and the Contributions SPD, the absence of any financial contribution to affordable housing should not warrant the appeal being dismissed. (paragraph 21 & 23).

5.42 Essentially, the Inspector's view was that even if the applicant's viability report was found to be unsound, substantial weight must be given to the WMS and PPG as these were nationally policy. As stated above, further publication and additional national and domestic policies have been adopted that clearly demonstrate that such contributions are unequivocally unlawful in planning terms.

5.43 In addition, the same approach was taken by Inspectors in the following appeals:

- Appeal allowed November 2017 for six dwellings. No affordable housing applicable. The Inspected stated:

However, since the Local Plan was adopted in 2014 the Government, by way of a Written Ministerial Statement (WMS), introduced as national policy that affordable housing should not be sought on schemes of ten units or less. The section of Planning Practice Guidance on planning obligations reiterates this position. This is an important material consideration to which I attach substantial weight." And

“Taking all these matters into account, I conclude that whilst in not making provision for affordable housing the proposal would be contrary to policy LP5 of the Local Plan, the substantial weight that I attach to more recent government policy outweighs non-compliance with the development plan and the evidence that has been presented in relation to the need for affordable housing in the District. (Paragraphs 36 and 42 of decision APP/D0515/W/17/3171513).

- Appeal allowed July 2015 for two dwellings. No affordable housing applicable. Inspector notes:

The appellants have provided a unilateral undertaking relating to a tariff-style contribution towards the provision of infrastructure. The National Planning Practice Guidance document (NPPG) indicates in Paragraph 012 that contributions should not be sought from developments of 10-units or less, and which have a maximum combined gross floorspace of no more than 1000sqm (gross internal area). In this case, therefore, and taking into account the circumstances of the proposed development, I consider that, should the proposal have been acceptable in all respects, a contribution of the type proposed in the unilateral undertaking would not have been necessary.” (Paragraph 15 of APP/V2004/W/15/3003161).

- 5.52 In December 2016 an appeal was allowed for 5 apartments again without the need for affordable housing contribution (APP/N1920/W/16/3154681). In the Decision Notice the Inspector stated:

In refusing permission, the Council indicated that suitable provision for affordable housing had not been secured. For viability reasons, the principle of a financial contribution towards off site affordable housing provision was accepted by the Council.

However, following the Court of Appeal’s judgement of 11 May 2016, wherein the Secretary of State successfully appealed against the judgment of the High Court of 31 July 2015 it follows that considerable weight should be given to the Secretary of State’s Written Ministerial Statement (WMS) of 28 November 2014 and the updated Planning Practice Guidance (PPG) which indicate that planning obligations of this type should not be sought from development of this limited scale.

The Council acknowledges that the WMS is a material consideration. However, in light of a recent SHMA (Strategic Housing Market Assessment), which it indicates a significant local need for affordable housing in the Borough, it has given greater weight to Policy CS4 of the Hertsmere Local Plan Development Plan Document Core Strategy (2013).

Notwithstanding that, as a matter of principle, the need for affordable housing is not unusual or specific to Hertsmere. Whilst the starting point for the determination of

planning applications should be the development plan (and that should be given significant weight), I consider that it does not outweigh the WMS and PPG which are the clearest and most up-to-date expressions of national planning policy.

Therefore, the WMS and the PPG should be given more weight than the identified development plan conflict and I conclude that an affordable housing contribution should not be required from this development. (paragraph 4-8)

- 5.53 Therefore, the Council's request for a contribution of £37,980 should be dismissed by the Inspector because it is clearly in breach of current national guidance and policy.

6.0 CONCLUSION

- 6.1 The applicant's case is as below:

- there are clear policy grounds and evidence for the dismissal of reason for refusal 2, 3 and 6.
- the applicant accepts the S106 requirements under reasons 4 and 5.
- The scale and bulk of the proposed extension are in keeping with property at number 63. There remains no historic property line or scale on the upper floors of the property's rear elevation.
- The majority of the property's contribution to the Conservation Area can be found at the front and the proposed mansard extension has been designed not to disrupt the existing parapet wall design at this elevation. Also, the mansard would not be seen at street level. The scale of the proposed roof extension is also in keeping with the height and both neighbouring properties. The Council approved a number of roof extensions all along the road. Therefore, the original conservation area character has already been altered with no consistence rhythmic building or roof design.

- 6.2 Therefore, we respectfully ask that the appeal be allowed.